IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8642 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD NEW COTTON MILLS LTD & 1 - Petitioner(s)

Versus

LATE RAJABHAI VALABHAI SAGAR REPRESENTED BY HIS WIDOW - Respondent(s)

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Appearance :

M/S TRIVEDI & GUPTA for Petitioner(s) : 1 - 2.
RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/12/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 01.01.2001 passed by the Labour Court, Ahmedabad in Recovery Application No.1854 of 1991 whereby the Labour Court has directed the petitioner to pay a sum of Rs.

15,540/- and also a sum of Rs.2500/- towards the cost of the said Recovery Application.

2. The brief facts of the case are as under :

2.1 The late respondent had started working with the petitioner company as Badli workman from 01.03.77. As per the terms of settlement arrived at between the petitioner company and the Registered and Representative Union (Majoor Mahajan Sangh), it was settled to reduce 41 workmen handling two looms each from weaving department of the petitioner company on the basis of voluntary resignations of workmen handling two looms each received through Majoor Mahajan Sangh.

2.2 The late respondent tendered his resignation and was accepted w.e.f. 01.02.91. Since the respondent had not put in 240 days of actual work in each of the preceding Calender years during his service, he was not eligible to get any retrenchment compensation, and therefore, no retrenchment compensation was paid to him. However, the late respondent claimed that having worked for 14 years in the petitioner company, the respondent was entitled to retrenchment compensation of Rs. 15,540/- equivalent to 210 days wages at Rs. 74/- per day. He also claimed

interest and costs of Rs. 500/-. The respondent thereafter filed Recovery Application.

3. Learned counsel for the petitioner contended that the eligibility for retrenchment compensation arises only on completion of 240 days/120 days of actual work in the preceding twelve calendar months in terms of Sections 25F(b) read with 25B(2) of the Industrial Disputes Act, 1947 and not otherwise. Whether or not a workman had completed 240 days/120 days of actual work in terms of the provisions of Industrial Disputes Act involves complicated question of law and leading of documentary oral evidence. Therefore, the Labour Court exercising powers under Section 33C has no jurisdiction to inquire into such questions and as a result the order of the Labour Court is required to be quashed and set aside.

4. Though served none appears for the respondent.

5. From the record it appears that the respondent has not led any evidence in the form of pay slip etc. to establish his right to receive the retrenchment compensation. It is also not established by proper evidence that the petitioner has completed 240 days in a

calendar year. I am, therefore, of the view that the contention raised by the petitioner is required to be accepted in as much as the company has already been closed down. In my view, the Labour Court has committed an error in exercising its powers under Section 33C of the Act. Hence the order of the Labour Court is required to be quashed and set aside.

6. In the premises aforesaid, the petition is allowed. The award of the Labour Court is quashed and set aside. Rule made absolute with no order as to costs.

(K.S. JHAVERI, J.)

Divya//